

Message Text

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R 152142Z MAR 76

FM SECSTATE WASHDC

TO AMEMBASSY LIMA

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E. O. 11652: GDS

TAGS: EFIN

SUBJECT: RECIPROCAL EXEMPTION OF SHIPS AND AIRCRAFT

REF: STATE A-45, OCTOBER 13, 1970; LIMA 6533, NOVEMBER 3, 1970

1. IF EMBASSY SEES NO OBJECTION, PLEASE INQUIRE OF APPROPRIATE GOP OFFICIALS IF GOP PREPARED TO RECIPROCALLY EXEMPT SHIPPING AND AIRLINE PROFITS.
2. U.S. INTERNAL REVENUE CODE (SECTIONS 872 AND 883) AUTHORIZES EXEMPTION FROM U.S. INCOME TAX OF FOREIGN SHIPS AND AIRCRAFT REGISTERED UNDER THE LAWS OF COUNTRIES WHICH GRANT AN EQUIVALENT EXEMPTION TO U.S. CITIZENS AND CORPORATIONS. IF PERU HAS A SIMILAR STATUTORY PROVISION, IT IS ADEQUATE FOR U.S. PURPOSES TO SUBMIT TO IRS A CERTIFIED TRANSLATION OF RELEVANT SECTIONS OF PERUVIAN LAW. OR WE CAN EXCHANGE NOTES CONFIRMING THE EXEMPTION IF GOP PREFERS.

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3. WE UNDERSTAND THAT ARTICLE 49 OF DECREE 287-68-HC

OF 1968 PERMITTED EXEMPTION OF FOREIGN SHIPS AND AIRLINES ON THE BASIS OF RECIPROCITY, BUT THAT A MORE FORMAL EXCHANGE OF NOTES WAS NECESSARY ON THEIR SIDE TO IMPLEMENT THE EXEMPTION. A DRAFT EXCHANGE OF NOTES WAS TRANSMITTED TO EMBASSY IN NOVEMBER 1970 BUT APPARENTLY WAS NOT DISCUSSED WITH GOP. (REFS. A & B).

4. WE WOULD LIKE TO RENEW THE APPROACH AT THIS TIME. BRANIFF AND WE BELIEVE GRACE LINES ARE AFFECTED, AND OTHER U.S. COMPANIES MAY ALSO BE. AERO-PERU AND PERUVIAN SHIPS CALLING AT U.S. PORTS ARE SUBJECT TO U.S. TAX. F.Y.I. APPARENTLY AERO-PERU HAS NOT YET FILED U.S. INCOME TAX RETURNS BUT WILL BE LIABLE TO DO SO IN APRIL AND IF FLIGHTS TO UNITED STATES TOOK PLACE PRIOR TO 1975 WILL ALSO BE LIABLE FOR BACK TAXES. THIS MAY INCREASE GOP INTEREST IN RECIPROCAL EXEMPTION.

5. EMBASSY REQUESTED TO RAISE ISSUE WITH GOP. IF AN EXCHANGE OF NOTES ACCEPTABLE, WE PROPOSE FOLLOWING TEXT:

6. U.S. NOTE TO GOP: "I HAVE THE HONOR TO REFER TO RECENT CONVERSATIONS BETWEEN REPRESENTATIVES OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND REPRESENTATIVES OF THE GOVERNMENT OF THE REPUBLIC OF PERU RELATING TO THE POSSIBILITY OF CONCLUDING AN AGREEMENT BETWEEN THE TWO GOVERNMENTS WITH A VIEW TO GRANTING, ON A RECIPROCAL BASIS, RELIEF FROM DOUBLE TAXATION ON EARNINGS DERIVED FROM THE OPERATION OF SHIPS AND AIRCRAFT. THE GOVERNMENT OF THE UNITED STATES OF AMERICA AGREES AS FOLLOWS:

(A) THE GOVERNMENT OF THE UNITED STATES OF AMERICA IN ACCORDANCE WITH SECTIONS 872(B) AND 883(A) OF ITS INTERNAL REVENUE CODE OF 1954, SHALL, ON THE BASIS OF EQUIVALENT EXEMPTIONS GRANTED BY THE GOVERNMENT OF THE REPUBLIC OF PERU TO CITIZENS OF THE UNITED STATES OF AMERICA AND TO CORPORATIONS ORGANIZED IN THE UNITED STATES OF AMERICA, EXCLUDE FROM GROSS INCOME AND EXEMPT FROM INCOME TAX ALL EARNINGS DERIVED

A. BY A CORPORATION ORGANIZED IN THE REPUBLIC OF PERU, OR

B. BY AN INDIVIDUAL WHO IS

(I) A CITIZEN OF THE REPUBLIC OF PERU AND
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(II) A NONRESIDENT ALIEN AS TO THE UNITED STATES
OF AMERICA

FROM THE OPERATION OF A SHIP OR SHIPS DOCUMENTED, AND FROM THE OPERATION OF AIRCRAFT REGISTERED, UNDER THE LAWS OF THE REPUBLIC OF PERU, INCLUDING EARNINGS FROM THE INCIDENTAL LEASE OF SHIPS, AIRCRAFT, OR CONTAINERS.

(B) THIS AGREEMENT SHALL BE APPLICABLE WITH RESPECT TO TAXABLE YEARS BEGINNING ON OR AFTER THE FIRST DAY OF JANUARY, 1976.

(C) EITHER OF THE TWO GOVERNMENTS MAY TERMINATE THIS AGREEMENT BY GIVING TO THE OTHER GOVERNMENT THROUGH THE DIPLOMATIC CHANNEL SIX MONTHS' PRIOR NOTICE OF TERMINATION IN WRITING AND, IN SUCH EVENT, THE AGREEMENT SHALL CEASE TO BE EFFECTIVE FOR THE TAXABLE YEARS BEGINNING ON OR AFTER THE FIRST DAY OF JANUARY NEXT FOLLOWING THE EXPIRATION OF THE SIX-MONTH PERIOD. THE GOVERNMENT OF THE UNITED STATES OF AMERICA WILL CONSIDER THIS NOTE, TOGETHER WITH YOUR NOTE OF REPLY CONFIRMING THAT THE GOVERNMENT OF THE REPUBLIC OF PERU AGREES TO TERMS CORRESPONDING TO THOSE OUTLINED ABOVE, AS CONSTITUTING THE AGREEMENT BETWEEN THE TWO GOVERNMENTS, ENTERING INTO FORCE ON THE DATE OF YOUR REPLY NOTE."

7. GOP RESPONSE NOTE TO EMBASSY: "I HAVE THE HONOR TO ACKNOWLEDGE THE RECEIPT OF YOUR EXCELLENCY'S NOTE DATED , 1976, IN WHICH REFERENCE IS MADE TO RECENT CONVERSATIONS BETWEEN REPRESENTATIVES OF THE GOVERNMENT OF THE REPUBLIC OF PERU AND REPRESENTATIVES OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA RELATING TO THE POSSIBILITY OF CONCLUDING AN AGREEMENT BETWEEN THE TWO GOVERNMENTS WITH A VIEW TO GRANTING, ON A RECIPROCAL BASIS, RELIEF FROM DOUBLE TAXATION ON EARNING DERIVED FROM THE OPERATION OF AIRCRAFT. IT IS NOTED THAT THE GOVERNMENT OF THE UNITED STATES OF AMERICA AGREES TO CERTAIN TERMS AS OUTLINED IN THAT NOTE. RECIPROCALLY, THE GOVERNMENT OF THE REPUBLIC OF PERU AGREES AS FOLLOWS:

(A) THE GOVERNMENT OF THE REPUBLIC OF PERU SHALL, ON THE BASIS OF EQUIVALENT EXEMPTIONS GRANTED BY THE GOVERNMENT OF THE UNITED STATES OF AMERICA TO CITIZENS OF THE REPUBLIC OF PERU AND TO LIMITED OFFICIAL USE

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CORPORATIONS ORGANIZED IN THE REPUBLIC OF PERU, EXCLUDE FROM GROSS INCOME AND EXEMPT FROM INCOME TAX ALL EARNINGS DERIVED

A. BY A CORPORATION ORGANIZED IN THE UNITED STATES OF AMERICA, OR

B. BY AN INDIVIDUAL WHO IS

(I) A CITIZEN OF THE UNITED STATES OF AMERICA AND

(II) A NONRESIDENT ALIEN AS TO THE REPUBLIC OF PERU

FROM THE OPERATIONS OF A SHIP OR SHIPS DOCUMENTED, AND FROM THE

OPERATION OF AIRCRAFT REGISTERED, UNDER THE LAWS OF THE UNITED STATES OF AMERICA, INCLUDING EARNINGS FROM THE INCIDENTAL LEASE OF SHIPS, AIRCRAFT, OR CONTAINERS.

(B) THIS AGREEMENT SHALL BE APPLICABLE WITH RESPECT TO TAXABLE YEARS BEGINNING ON OR AFTER THE FIRST DAY OF JANUARY, 1976.

(C) EITHER OF THE TWO GOVERNMENTS MAY TERMINATE THIS AGREEMENT BY GIVING TO THE OTHER GOVERNMENT THROUGH THE DIPLOMATIC CHANNEL SIX MONTHS' PRIOR NOTICE OF TERMINATION IN WRITING AND, IN SUCH EVENT, THE AGREEMENT SHALL CEASE TO BE EFFECTIVE FOR THE TAXABLE YEARS BEGINNING ON OR AFTER THE FIRST DAY OF JANUARY NEXT FOLLOWING THE EXPIRATION OF THE SIX-MONTH PERIOD.

THE GOVERNMENT OF THE REPUBLIC OF PERU CONSIDERS THAT YOUR NOTE ABOVE-MENTIONED, TOGETHER WITH THIS NOTE IN REPLY CONSTITUTES THE AGREEMENT BETWEEN THE TWO GOVERNMENTS, ENTERING INTO FORCE ON THE DATE OF THIS NOTE.
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Message Attributes

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Disposition Approved on Date:
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Disposition Case Number: n/a
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Margaret P. Grafeld
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